IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 14805 of 2007

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether hit is to be circulated to the civil judge ?

==========

GUJARAT TOOLROOM LIMITED AND ANOTHER
Versus
STATE OF GUJARAT AND ANOTHER

==========

Appearance :
MR PARIMAL PATEL for MR TS NANAVATI for the Applicants
MR MR MENGDEY, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
MR YN RAVANI for Respondent No.2

==========

CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/12/2007

ORAL JUDGMENT

1. **RULE**. Mr.M.R.Mengdey, learned Additional Public Prosecutor, waives service of notice of Rule on behalf of respondent No.1 – State of Gujarat and Mr.Y.N.Ravani, learned advocate, waives service of

notice of Rule on behalf of respondent No.2.

2. Having regard to the facts of the case, with the consent of the learned advocates for the parties, the matter is taken up for hearing today.

3. By this application under Section 482 of the Code of Criminal Procedure, 1973 (the Code), the applicants have prayed to quash and set aside Inquiry Case No.13 of 2006 – M Case No.7/2006 now Criminal Case No.5525 of 2007 pending before the learned Judicial Magistrate First Class, Court No.10, Surat.

4. Mr.Parimal Patel, learned advocate, for Mr.T.S.Nanavati, learned advocate for the applicants, has submitted that the aforesaid criminal complaint has been filed alleging commission of offence punishable under Section 420 of the Code against the applicants in respect of non-supply of certain goods to the respondent No.2. It is submitted that subsequently, the parties, viz. the applicants and respondent No.2 have settled the matter and a Compromise Deed has been executed between them on 23.11.2007, a copy whereof is annexed to the application as Annexure-”B”. Attention of the Court is drawn to the contents of paragraph No.(3)(a) of the said Compromise Deed, wherein the parties have, inter alia, decided not to pursue the Criminal Case lodged by respondent No.2 against the present applicants. It is accordingly urged that in view of the aforesaid compromise arrived at between the parties, the application be allowed by quashing the complaint in question.

5. In response to the averments made in the application, an affidavit in reply has been filed by respondent No.2, Bhavesh Vitthalbhai Koladia, as partner of Skyline Surgipharma wherein it has been categorically averred that “once the settlement is arrived at between the parties where the dispute was arisen in commercial transaction, the deponent and the partners of M/s.Skyline Surgipharma are not having objections if the complaint is quashed xxx.” Mr.Y.N.Ravani, learned advocate for respondent No.2 has reiterated the aforesaid position and has submitted that respondent No.2 has no objection if the complaint is quashed.

6. The Apex Court, in the case of ***Central Bureau of Investigation v. Duncans Agro Industries Ltd.***, (1996)5 SCC 591 has held that even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decree passed in suits instituted by the banks, for all intents and purposes, amounts to compounding of the offence of cheating. The Court was of the view that, considering the fact that the claims of the banks have been satisfied and the suits instituted by the banks have been compromised on receiving payments, the said complaint should not be pursued any further.

7. Examining the facts of the present case in the light of the principle enunciated by the Supreme Court in the decision cited above, it is an undisputed position that the parties have amicably settled the disputes between them, which arise solely out of

commercial transactions. Moreover, the respondent No.2 original complainant has no objection if the complaint is quashed. In these circumstances, no fruitful purpose would be served by pursuing the complaint any further. This is, therefore, a fit case for exercise of powers under Section 482 of the Code.

8. For the foregoing reasons, the application succeeds and is accordingly allowed. Inquiry Case No.13 of 2006 – M Case No.7/2006 now Criminal Case No.5525 of 2007 pending before the learned Judicial Magistrate First Class, Court No.10, Surat is hereby quashed. Rule is made absolute accordingly.

(H.N.DEVANI, J.)

*Shitole